

WILLKIE FARR & GALLAGHER LLP

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REDACTED – FOR PUBLIC INSPECTION

November 20, 2013

ACCEPTED/FILED

NOV 20 2013

Federal Communications Commission
Office of the Secretary**VIA COURIER**

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *In the Matter of Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593*

Dear Ms. Dortch:

On behalf of Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC and tw telecom inc., please find enclosed two copies of the redacted version of a notice of *ex parte* for filing in the above referenced proceeding. The highly confidential version of the filing contains information that the Wireline Competition Bureau has deemed highly confidential under the *Second Protective Order*.¹

Pursuant to the procedures outlined in the *Modified Protective Order*² and *Second Protective Order*,³ as modified by the instructions in the second voluntary data request,⁴ the

¹ *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Second Protective Order, 25 FCC Rcd. 17725 (2010) ("*Second Protective Order*"); see also *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd. 6571 (2011) (supplementing the *Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, 27 FCC Rcd. 1545 (2012) (further supplementing the *Second Protective Order*).

² See *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd. 15168, ¶¶ 5, 14 (2010).

³ See *Second Protective Order* ¶ 15.

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original highly confidential version of the filing is being filed with the Secretary's Office under separate cover, two copies of the highly confidential version of the filing are being delivered to Andrew Multz of the Pricing Policy Division of the Wireline Competition Bureau, and one machine-readable copy of the redacted version of the filing is being filed electronically via ECFS. In addition, pursuant to a request from members of the Wireline Competition Bureau staff, one copy of the highly confidential version of the filing is being delivered to Derian Jones of the Pricing Policy Division of the Wireline Competition Bureau.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones

*Counsel for Cbeyond, EarthLink, Integra,
Level 3 and tw telecom*

Enclosure

⁴ See *Competition Data Requested in Special Access NPRM*, WC Docket No. 05-25, RM-10593, Public Notice, DA-1576, at 21 (rel. Sept. 19, 2011) (“[P]lease provide those copies of confidential and highly confidential filings that are to be delivered to staff of the Pricing Policy Division to Andrew Multz instead of Marvin Sacks.”).

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EX PARTE

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**Re: *Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp.
Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange
Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25,
RM-10593***

Dear Ms. Dortch:

On November 18, 2013, Joe Cavender of Level 3 Communications, LLC and the undersigned, representing Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., Level 3 Communications, LLC and tw telecom inc., met with Nicholas Degani, Legal Advisor to Commissioner Ajit Pai. On November 19, 2013, Mr. Cavender and the undersigned, representing the same companies as listed in the previous sentence, met with Christianna Barnhart, Acting Legal Advisor to Commissioner Jessica Rosenworcel. During both meetings, we discussed the implications of AT&T's announced plan to eliminate discounts for DS1 and DS3 special access terms plans that are longer than 36 months. We made the points set forth in the attached document.

Please do not hesitate to contact me if you have any questions or concerns regarding this submission.

Respectfully submitted,

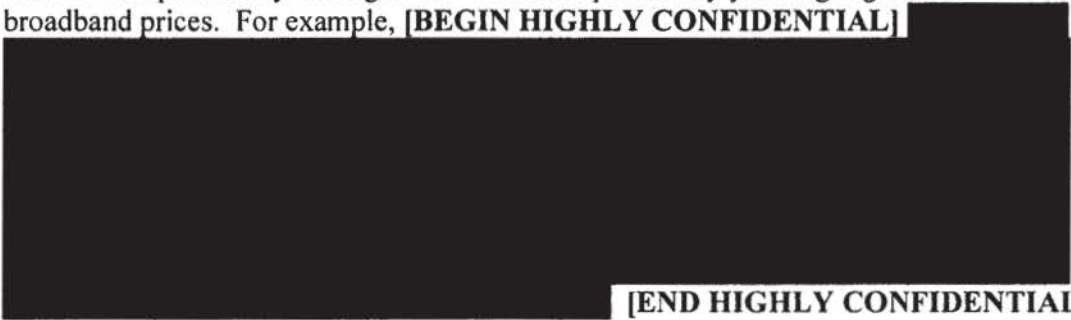
/s/ Thomas Jones

*Counsel for Cbeyond, EarthLink, Integra,
Level 3 and tw telecom*

CC (via email): Meeting participants

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**Implications of AT&T Planned Elimination of Discounts for
DS1 and DS3 Special Access Term Plans Longer than 36 Months**

1. AT&T is classified as dominant in the provision of DS1 and DS3 special access services in its incumbent LEC region (in Phase II and non-Phase II areas). The competitive carriers' market experience confirms that this classification is appropriate.
2. In many situations, competitive carriers have no choice but to rely on five-year term discount plans for DS1/DS3 services in order to provide downstream retail services to business customers, and AT&T's proposed effective rate increase would be extremely harmful to competition and businesses.
 - a. Competitors often have no choice but to purchase DS1 and DS3 special access from ILECs because (i) they cannot build their own facilities or purchase the service from a non-incumbent LEC wholesaler and (ii) Ethernet is not a viable alternative in many cases (e.g., end users often do not want it; AT&T often does not offer it (at least reliably); AT&T's prices are too high (especially at lower capacities) to enable competitors to offer downstream retail services at prevailing rates; provisioning is often extremely slow (much slower than for DS1 and DS3 services); and Ethernet purchases often do not count toward DS1/DS3 volume lock-up commitments).
 - b. The five-year term discounts for DS1/DS3 services yield prices that are significantly lower than the three-year term discounts (to say nothing of the monthly rates).
 - c. As a result, the five-year discounts are widely relied upon by competitive carriers to offer downstream retail services at prevailing retail market prices.
 - d. If AT&T's proposed effective rate increase were to take effect, it would cause significant harm to competition by raising rivals' costs and potentially yielding higher business broadband prices. For example, **[BEGIN HIGHLY CONFIDENTIAL]**
**[END HIGHLY CONFIDENTIAL]**
3. The effective rate increase is not necessary to advance AT&T's stated goals of phasing out long-term DS1 and DS3 circuits and eliminating those services by 2020: (i) AT&T could delay the discontinuance of five-year term plans until 2015, and (ii) it could phase out long-term plans while reducing prices for three-year term plans to match at least current prices for five-year plans.
4. If AT&T does file the tariff change as we understand it, we will file a petition to suspend/investigate.